No. 12694

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

HARRY THEODORE PETERSEN, IDA PETERSEN, CLAYTON LEON DAIGLE and AZILE CAROL DAIGLE, Individually and as a Copartnership Doing Business as "The Lodge," and STATE OF CALIFORNIA,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S REPLY BRIEF.

ERNEST A. TOLIN,
United States Attorney,
WALTER S. BINNS,
Chief Assistant United States Attorney,
CLYDE C. DOWNING,
Assistant United States Attorney,
MAX F. DEUTZ,
Assistant United States Attorney,
600 United States Post Office and Courthouse Building, Los Angeles 12, California,
Attorneys for Appellee.

Parker & Company, Law Printers, Los Angeles. Phone MA. 6-9171.

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APPELLEE'S REPLY BRIEF.

Statement of the Case.

This is an action wherein the appellee, The United States of America, brought a suit for injunction and for declaratory relief against the individual defendants, Petersen and Daigle, to determine whether the United States of America, acting through the National Park Service, or the California State Board of Equilization, had the jurisdiction to regulate the sale of liquor at Wilsonia in Kings Canyon National Park. As will be explained in more detail later in this brief, Wilsonia is a residential mountain community situated on a tract of privately owned land within the exterior boundaries of Kings Canyon National Park.

As the main problem involved here arose from a conflict of claims to jurisdiction on the part of the State

of California and of the United States, the parties to this action stipulated that the State of California might intervene in this proceeding to assure the presentation, and preservation, of the main issue, *i. e.* whether the State or the Federal Government had exclusive jurisdiction over the land involved. The State of California intervened and filed its answer in the lower court.

The facts of this case are covered in their entirety by an extensive Stipulation of Facts later adopted in the Findings of Fact of the Court below.

After the filing of exhaustive briefs upon submission of the case, the Court below, by a written Memorandum of Decision [Tr. p. 46], determined that, through the various statutes ceding and accepting exclusive jurisdiction, the State of California had exercised a constitutional power to cede exclusive jurisdiction and that the United States had exercised its constitutional power to accept such a cession of jurisdiction.

The State of California has challenged this decision and has set forth certain arguments purporting to prove that there are certain unwritten limitations upon the power of the State to cede, and the Federal Government to accept, jurisdiction. The effect of these contentions is to read into the plain language of the statutes certain limitations and reservations. It is believed that the statutes are very clear, that they simply form a contract of cession of jurisdiction, and that any attempt to read implied reservations into this contract would destroy its meaning and its purpose.

History and Background of the Wilsonia Problem.

Within the exterior boundaries of Kings Canyon National Park, in the State of California, there is a tract of approximately 120 acres of privately owned land entirely surrounded by land owned by the United States of America and used for national park purposes.

This particular land was patented to a private individual prior to the turn of the last century (October 15, 1891), shortly after General Grant National Park, the predecessor of Kings Canyon National Park, had been created on October 5, 1890, and before the State of California had ceded any jurisdiction to the United States over any national park lands in California.

Subsequently, the State of California ceded exclusive jurisdiction to the United States over Yosemite, General Grant (and later Kings Canyon), and Sequoia National Parks, with certain specific reservations. The language of these acts of cession and their acceptance by the United States will be discussed in detail later in this brief.

As a result of Federal Government land policies in the early days of the west, most national parks in the western part of the United States are dotted with small tracts of land (homesteads, mining claims, etc.), which had been patented, or were subject to being patented, to private owners before the national parks were created. There are approximately 100 tracts of such privately owned land, not counting subdivisions, in the national parks situated in California alone. These 100 tracts represent much less than one per cent of the total area of these California parks.

Even today, some lands are still being patented in these national parks. In fact, some small parcels of land in the Wilsonia Tract of Kings Canyon National Park, the identical tract under discussion here, have recently been granted to private owners in order to adjust irregularities caused by erroneous private surveys of boundaries between government and private lands. (56 Stat. 310, 16 U. S. C. A. 80a.)

There are also some privately owned, state owned, county owned, and municipally owned rights-of-way within our western national parks, including rights-of-way for roads constructed under R. S. 2477, 43 U. S. C. A. 932, rights-of-way for canals, ditches, and reservoirs constructed under the Act of March 3, 1891, 43 U. S. C. A. 946-949; and other kinds of rights-of-way granted by other Acts of Congress. As a general rule, proprietary interests vested in the grantees pursuant to these Acts before the parks were created, but there are some notable exceptions, such as the Hetch Hetchy project in Yosemite National Park (38 Stat. 242), in which the rights-of-way were granted, and the proprietary interests vested, after the parks were created.

There are also state owned school lands and certain other lands owned by states or political sub-divisions of states in some of our western national parks, but when all the various kinds of tracts of land not owned by the Federal Government, including permanent rights-of-way, are added together, they still constitute less than one per cent of the area of the parks in which they are located.

The legal question here, is whether the State of California, or the United States, has jurisdiction over these small islands of privately owned, state owned, county owned, and municipally owned lands within national parks.

The answer to this question will be very far reaching, as it will directly affect the majority of the national parks in the western United States.

The manner in which the problem is posed in the instant case only partially discloses the enormity of the problem. In the present case, the individual appellants, Petersen and Daigle, operate a cocktail lounge at Wilsonia, a residential mountain home community, which is located on 120 acres of privately owned land within the General Grant Grove section of Kings Canyon National Park, an area formerly included within General Grant National Park. The California State Board of Equalization issued a liquor license to the appellants, Petersen, *et al.,* and their predecessors, over the protests of the National Park Service, Department of the Interior, which challenged the State's jurisdiction to issue the license. National Park Service regulations require a special permit issued by the Service before anyone may sell liquor on privately owned lands within a national park. Such a permit was previously denied to appellant Petersen, and his then partner Edmunds, the predecessors in title to these individual appellants. By consent of all parties, the State of California has intervened in this proceedings so as to assure a proper presentation of the problem involved for an authoritative decision.

In this *Wilsonia* case, Tulare County has no police officers or sheriff's deputies within Kings Canyon National Park, and the nearest Tulare County peace officer is located about thirty-five miles distant. On the other hand, National Park Service rangers are stationed on park land within a few hundred yards of the boundaries of the Wilsonia tract.

The Federal Government, in maintaining and preserving the national parks of the nation for the benefit of all the people of the United States, is faced with very difficult problems where situations similar to those at Wilsonia exist. At Wilsonia, the sale of liquor, without regulation based on the best interests of the public in enjoying national parks, tends to nullify the purposes of the creation of a national park. Those purposes are the opportunity afforded the public, particularly family groups, to enjoy the primitive natural beauty of this area and its recreational facilities under the careful guidance of the National Park Service.

Actually, the liquor problem in national parks is only one in many wherein this jurisdictional problem arises. With tiny islands of private property within the exterior boundaries of a great national park, the Federal Government alone can effectively render the necessary policing, although it would be the responsibility of the state, if the state had jurisdiction over the property.

As a practical matter, however, the great majority of the property owners at Wilsonia have assumed that the United States has always had jurisdiction and have never

doubted that fact until the present proceedings were instituted.

On the only two occasions of conflict over jurisdiction at Wilsonia, the United States District Court had, without reported opinion, held that the Federal Government had jurisdiction under the ceding statutes to be discussed in this appeal. (*Andy Ferguson v. Leroy McCormick,* No. C 113-M Civil (1930), and *C. J. Fortier and W. J. Lawson v. S. B. Sherman,* No. 31 Civil (1939), both in the Southern District of California.)

The importance of the problem, and its very far reaching consequences, is therefore very clearly apparent.

Again, the question is,

> "Does the State of California, or the United States, have jurisdiction over privately owned land located within a national park where the state has ceded exclusive jurisdiction over the national park in general terms?"

Manner of Reply by the Appellee.

The appellants have raised three points as the basis for their appeal. These points are:

A. The Tract of Land Comprising Wilsonia Village Was Not "Dedicated and Set Apart" for Park Purposes.

B. The United States Courts Do Not Have Jurisdiction of Offenses Unless Committed Within or on "Lands Reserved or Acquired for the Use of the United States."

C. The United States Does Not Acquire Exclusive Jurisdiction Unless It Owns the Property Involved.

It is the firm opinion of the counsel for appellee that Points "A" and "B," above, are collateral issues and do not squarely meet the real problem of cession of jurisdiction. Point "C" does bear directly on the problem, but it is believed that all three of these arguments should be met by rebuttal after the real issues have been presented and discussed.

In the Court below, the Honorable Wm. C. Mathes, the trial judge, posed four questions which went to the very essence of the problem. The extreme clarity of the Court's understanding of the problem involved was revealed by those questions. We will, therefore, open our discussion by answering those questions substantially as they were answered for the trial court.

The questions propounded below were:

I. Does the State of California purport to cede exclusive jurisdiction over private property within Kings Canyon National Park?

II. If so, what is the constitutional authority for such cession?

III. Does the United States purport to accept exclusive jurisdiction over such property?

IV. If so, what is the constitutional authority for such acceptance of jurisdiction?

Summary of Appellee's Argument.

The appellee contends that there is only one question before this Court. That question is: May a State constitutionally cede exclusive police jurisdiction over privately owned property within a state, and may the Federal Government constitutionally accept such jurisdiction?

The appellants contend that federal ownership of land is a prerequisite to the acquisition of exclusive jurisdiction by the Federal Government. This theory has no support in the law. While there are cases purporting to so hold, each of those cases, when examined carefully, is distinguishable on its facts and clearly shows that no such broad doctrine was contemplated.

The argument set forth below will show that the State of California clearly intended to cede exclusive jurisdiction to the United States, that the United States intended to accept this offer to contract, and that thereby a contractual cession of jurisdiction, as contemplated by the United States Supreme Court in *Collins v. Yosemite Park Curry Co.,* 304 U. S. 518 (1938), took place. There are no constitutional prohibitions, either state or federal, against such a cession and acceptance of jurisdiction. Instead, the actions of the State and Federal Governments, in making this contractual settlement of jurisdiction between sovereignties, was the result of an evolution of the legal concept of jurisdiction. (See "Evolution of the Problem," below.)

The arguments of the appellants are essentially directed toward collateral points not germane to the real issues here. It is believed that the contentions of appellants that certain phrases of the ceding statutes, *i. e.,* "dedi-

cated and set apart," were requirements which were not met, are without merit when the statutes are taken together. The Court below expressly so held. Similarly, there is no defect in the territorial jurisdiction granted to the Courts. The territorial jurisdiction argument of appellants is directed toward a definition of that term in the United States Criminal Code, 18 U. S. C. A., Section 7, which code deals with certain, but not all, classes of crimes and offenses. This is not a criminal case and, even if the appellants' argument had merit, it would not be properly cognizable in this proceeding. This is a civil action and jurisdiction must be adjudged on the basis of the legislative and executive expressions of the two governments. These expressions clearly show that in a desire to establish a workable police jurisdiction over the whole of the lands, both publicly and privately owned, within the boundaries of this national park, and to avoid a piecemeal or checkerboard pattern of conflicting jurisdictions, the State and the Federal Government worked out an arrangement whereby federal jurisdiction was established over a blocked-out area and the line between state and federal jurisdiction was drawn at that point. The blocked-out area included *all* lands within the park boundaries so that a simple, unified policing could take place. Any other result would lead to a ridiculous conflict of jurisdiction calling for a determination of the status of each parcel of land within the park and making a unified administration or policing impossible. As national parks benefit both the State and the Federal Government, it must be presumed that the State, as well as the United States, had an interest in seeing that the park was efficiently administered and would therefore be willing to surrender small segments of its jurisdictional realm in order to accomplish this purpose.

APPELLEE'S ARGUMENT.

A. EVOLUTION OF THE PROBLEM.

Admittedly, the appellee United States of America asked the lower Court, and now asks this Honorable Court, to go one step farther in the field of cession of jurisdiction than any Court has heretofore been asked to do, except in the cases of *United States v. Fruitt* (Unreported decision of the District Court of the Western District of Washington, No. 15828), *Ferguson v. McCormick,* and *C. J. Fortier and W. J. Lawson v. S. B. Sherman* (cited *supra*).

All reported jurisdictional cases involve situations in which there was no occasion for the present question to be raised. As we will point out below, there appears to be no prohibition against such a cession in either state or federal constitutions, in their statutes, or in the reported cases. The cases infer that such a cession is possible, and the Court below, and the court in the *Fruitt* and *Ferguson* cases, expressly held that it could be done.

In tracing the evolution of the problem, we will discuss the methods of ceding jurisdiction and the manner in which they have come into existence.

There are several means by which the United States may acquire jurisdiction over land within the states.

The first two methods arise under Article I, Section 8, Clause 17, of the Constitution of the United States which grants the power

> "To exercise exclusive Legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the Acceptance of Congress, become the seat

> of the Government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of Forts, Magazines, Arsenals, dock-yards, and other needful Buildings;" * * *.

Obviously, the first refers to the District of Columbia. It permits an exercise of exclusive jurisdiction over a particular area without any requirement that the Federal Government hold title to said land, or any part thereof.

The State of Maryland ceded the County of Washington to the United States (Acts. Md. 1791, c. 45) in 1791 providing that nothing therein contained should be construed to vest in the United States any right of property or affect rights of individuals otherwise than as transferred by such individuals to the United States. The State of Virginia ceded jurisdiction over a portion of its territory under similar provisions.

> *U. S. v. Belt* (1944), 142 F. 2d 761, 79 U. S. App. D. C. 87;
>
> *Phillips v. Payne,* Dist. Col. 1876, 92 U. S. 130.

The Federal Government has continued to exercise jurisdiction over the District without title to a large portion of the area, and this right has never been seriously questioned.

The second method, in the same Article I, Section 8, Clause 17, permits the exercise of exclusive jurisdiction over lands "purchased" for certain purposes, to-wit: forts, magazines, arsenals, dockyards, and other needful buildings. At first the purposes as set forth in this clause were strictly limited to the wording of the clause. This, however, is no longer the case. In *James v. Dravo*

Contracting Co., W. Va. 1937, 302 U. S. 134, the court said at page 143:

> "We construe the phrase 'other needful buildings' as embracing whatever structures are found to be necessary in the performance of the functions of the Federal Government."

The court extended the language of Clause 17 to cover dams and locks. The same result was earlier reached in *U. S. v. Tucker,* D. C. Ky., 1903, 122 Fed. 518. Numerous similar decisions are of record where "needful buildings" was construed to include hospitals, post offices, Indian schools, custom houses, and so forth.

It is quite conceivable that Clause 17 could be construed, under the broad language of the United States Supreme Court in the *Dravo* case, cited above, as embracing the acquisition of certain areas within the states to be used as national parks for the benefit of all of the people of the nation. Such national parks are maintained "in the performance of functions of the Federal Government."

Such construction is not necessary, however, as this clause is not the sole authority for the acquisition of jurisdiction. *Collins v. Yosemite Park Co.,* 304 U. S. 518 (1938), at page 529:

> "The clause is not the sole authority for the acquisition of jurisdiction. There is no question about the power of the United States to exercise jurisdiction secured by cession, although this is not provided for by Clause 17. And it has been held that such a cession may be qualified. It has never been necessary, heretofore, for this court to determine whether or not the United States has the con-

> stitutional right to exercise jurisdiction over territory, within the geographical limits of a State, acquired for purposes other than those specified in Clause 17. It was raised but not decided in *Arlington Hotel v. Fant,* 278 U. S. 439, 454. It was assumed without discussion in *Yellowstone Park Transportation Co. v. Gallatin,* 31 F. (2d) 644."

In the *Collins* case, the court went on to decide the question in favor of the government acquiring jurisdiction.

That the federal power to acquire title to, or jurisdiction over, federal lands, is not dependent on constitutional grants, or the limitations of Article I, Section 8, Clause 17, of the Constitution, but flows from inherent powers of sovereignty, see also:

> *United States v. Curtis-Wright Export Corp.,* 299 U. S. 304, 318 (1936);
>
> *Fort Leavenworth R. R. Co. v. Lowe,* 114 U. S. 525 (1885).

At this point, reference should be made to the contention of the appellants that the Federal Government must have title in order to have jurisdiction. The reason for this is that there are a number of cases, including nearly all of the cases cited by the appellant, which so imply. They do not so hold, however, and are distinguishable because of the law just referred to. Some explanation is therefore essential before proceeding further.

The courts have uniformly held that when the Federal Government acquires land under Article I, Section 8,

Clause 17, of the Constitution by "purchase" and "with the consent of the State," jurisdiction is acquired, except to, the extent that the state might place limitations upon its consent. As pointed out above, "purchase" has been strictly construed and has been held not to include lands acquired by the Federal Government by gift or condemnation or to include lands owned by the Federal Government before the state was created. It was from this construction that the Supreme Court held that there were other types of acquisition available (*Fort Leavenworth R. R. Co. v. Lowe,* 114 U. S. 525, 539), and that in such cases there had to be an *express* cession of jurisdiction by the state, and that in making such a cession, the state could limit its cession in any manner not inconsistent with the beneficial governmental use sought to be made of the land by the Federal Government (*Fort Leavenworth R. R. Co. v. Lowe, supra*). As we will point out later, all of the cases cited by the appellant on this point are those in which there were conditions to the cession and those conditions were not met and therefore jurisdiction was not ceded, or, they were cases in which the Federal Government sought to invoke jurisdiction automatically under Article I, Section 8, Clause 17, but there was no "purchase" and for that reason the acquisition failed.

We may, therefore, conclude that jurdiction and title need not go hand in hand but that jurisdiction may, in some cases, cover land to which the government does not hold title.

According to the United States Supreme Court, a state may contract away jurisdiction. *Collins v. Yosemite Park Co.,* 304 U. S. 518 (1938). In that case the court held (at page 528):

> "The States of the Union and the National Government may make mutually satisfactory arrangements as to jurisdiction of territory within their borders and thus, in a most effective way, cooperatively adjust problems flowing from our dual system of government."

The inherent powers of sovereignty, which permit the United States to acquire and exercise exclusive jurisdiction over federal lands within a park, should also permit the acquisition and exercise of exclusive jurisdiction by the United States over state and private lands where the state cedes exclusive jurisdiction to the lands within the exterior boundaries of a park. The cession and acceptance of jurisdiction would constitute a contractual arrangement between state and Federal Government, over the territory involved, for the specific purpose of enabling the Federal Government to maintain and operate a national park for the benefit of the American people as a whole.

The evolution of the law of cession of jurisdiction up to this point, may thus be summarized as follows:

1. The United States may acquire ownership and jurisdiction over land, by purchase, under Article I, Section 8, Clause 17, of its Constitution.

2. This is not the sole authority for such acquisition of title or jurisdiction but the same may arise under inherent powers of sovereignty. (*Collins v. Yosemite,* and other cases, *supra.*)

3. State and Federal Governments may, by contract, make mutually satisfactory arrangements as to jurisdiction over lands within a state. (*Collins v. Yosemite,* and other cases, *supra.*)

With this background, we believe that this Court will, from the discussion to follow in this brief, find the authority to support the lower court decision to carry this reasoning on to its logical conclusions:

1. That there is no constitutional, statutory or judicial prohibition against cession of jurisdiction over public or private property, when such cession is to the mutual advantage of both state and Federal Governments and their citizens.

2. That federal jurisdiction over private lands within a national park does not derogate the title of private owners, but permits a unified administration and exercise of police power over the entire park area for the benefit of the people of the state as well as those of the nation.

3. That, therefore, where a state has, by legislative enactment, ceded such jurisdiction, and the Federal Government has accepted the same, exclusive jurisdiction should be with the United States, subject to the reservations expressed in the ceding and accepting statutes.

B. THE BASIC QUESTIONS.

I.

Does the State of California Purport to Cede Exclusive Jurisdiction Over Private Property Within Kings Canyon National Park?

The Stipulation of Facts [Tr. pp. 25-43, incl.], sets forth all of the pertinent facts in this proceeding, including the ceding statutes. Briefly, the first statute ceding jurisdiction to the United States over the territory in question was California Statutes 1919, Chapter 51, Section 1, approved April 15, 1919 [Tr. pp. 28-29] which ceded exclusive jurisdiction over General Grant National Park as well as Yosemite and Sequoia National Parks. This cession was accepted by the United States in 16 U. S. C. A. 57 [Tr. pp. 29-30]. Thereafter, General Grant National Park was abolished by 16 U. S. C. A. 80a on March 4, 1940 [Tr. pp. 30-31], and the territory therein, plus certain described sections (including those wherein Wilsonia property is located), became Kings Canyon National Park. Jurisdiction over this newly described area was ceded by Section 119 of the Government Code of California, dated April 7, 1943 [Tr. pp. 31-32], and accepted by a letter dated April 21, 1945 [Tr. pp. 32-33].

The pertinent portions of both ceding statutes are identical:

> "Exclusive jurisdiction . . . is hereby ceded to the United States *over and within all of the territory which is now or may hereafter be included in those several tracts of land in the State of California set aside and dedicated for park purposes by the United States* . . ." (Emphasis added.)

By 54 Stat. 41, 16 U. S. C. A. 80a [Tr. pp. 30-31], as stated above, the United States dedicated and set apart for park purposes certain tracts of land. The land described in Section 2 of that Act by section, township and range, included the whole of the tract in which Wilsonia is located.

The most recent cession of jurisdiction, that of 1943, took place three years after Kings Canyon National Park was created. The factual background, existing at the time this 1943 cession took place, clearly indicates that both the state and Federal Government were aware, at that time, of the existence of privately owned lands in Kings Canyon National Park, and aware of the fact that there was a jurisdictional question. Yet, in the face of these facts, neither party made any expression or reservation, in either the ceding statute, or the acceptance, to indicate that privately owned lands were to be treated differently from federally owned lands so far as jurisdiction was concerned. This, we believe, is conclusive evidence that the parties intended a complete cession of jurisdiction over all lands within the park. The facts that make this so apparent are that the boundaries of Kings Canyon National Park were established by 54 Stat. 41 in 1940 [Tr. pp. 30-31], and that the contents of that statute were known to the Legislature of the State of California when Government Code, Section 119, was enacted in 1943. The Federal Government had recognized the situation by reserving "validly existing rights" under Section 2 of 54 Stat. 41. Furthermore, in 1930, the case of *Ferguson v. McCormick (supra)* had been decided resolving, in favor of the Federal Government, a then existing dispute over jurisdiction of the Wilsonia Tract; and, in 1940, the California Attorney General had rendered an opinion,

NS-3019, asserting jurisdiction in the state over similar lands in Yosemite National Park.

Another fact deemed extremely persuasive as to intent, is the fact that no requirement of ownership accompanies the cession of jurisdiction. Yet, the same legislature of California, in the same year of 1943, in ceding exclusive jurisdiction over military reservations, had required that the Federal Government acquire title to the land involved and perform certain other formalities. (See *California Government Code, Sec. 116.*) The lack of such a requirement in the national park cessions indicates that title was apparently not considered essential. The appellants are attempting to amend the ceding statutes, by their arguments, to read that cession would be "over those lands now or hereafter to be *acquired* by the United States." The statutes of cession *do not* so read, and there is no justification for changing the apparent clearly intended language of the California Legislature. To adopt the construction urged by appellants would constitute making a new contract between the parties. The United States Supreme Court found the presently existing contract unequivocal in *Collins v. Yosemite Park Co. (supra),* where, at page 528, the Court said:

> "Whatever the existing status of jurisdiction at the time of their enactment, the acts of cession and acceptance of 1919 and 1920 are to be taken as declarations of the agreements reached by the respective sovereignties, State and Nation, as to the future jurisdiction and rights of each *in the entire area of Yosemite National Park.*" (Emphasis added.)

If "entire area" does not include both public and private property, what does it mean? It is submitted that the

Supreme Court at that time, in effect, decided our case for us.

To construe the statutes as the defendants urge would not only make a new contract not contemplated by the parties, but, would lead to uncertainty of jurisdiction over many types of property within the boundaries of this park, and of Yosemite and Sequoia National Parks under identical statutes, such as jurisdiction over winding state and county roads, some of which, although the extent and exact location of their rights-of-way are indefinite, are still maintained by the counties; jurisdiction over claims in cases where the proprietary interest and titles are in dispute; jurisdiction over right-of-way easements for power lines and other privately owned utility lines; jurisdiction over municipal projects, power dams and other industrial plants; and jurisdiction over all lands in which proprietary interests have been initiated and acquired from the United States since the enactment of the cession act and the acceptance.

Furthermore, the general public's concept usually envisions all land within the park gates as being policed by Park Rangers and title is not considered.

With all of this background, it would appear that the silence of the state in its 1943 ceding statute is highly significant and indicates that the statute was intended to mean exactly what it said when it ceded jurisdiction "over and within all of the territory which is now or may hereafter be included in those several tracts of land . . . set aside and dedicated for park purposes . . .," especially when language of dedication had already been used. The result was merely a contractual cession of jurisdiction over the private lands within the authority of *Collins v. Yosemite Park Co. (supra),* which had

clarified this point in 1938, five years prior to this ceding statute.

While the state reserved certain powers and rights of taxation, suffrage, and so forth, in no instance did the state reserve any general jurisdiction. The area over which jurisdiction is ceded is defined as "all of the territory which is now or may hereafter be included in those several tracts of land in the State of California set aside and dedicated for park purposes by the United States," and makes no exception of privately owned lands. Furthermore, at no time does the state require that the United States own the land over which jurisdiction is ceded, although at the time of the enactment of both ceding statutes, the Federal Government had already defined the park boundaries and had blocked out an area which included within it certain parcels of privately owned land. Had the state wanted to limit the cession to government lands, such a reservation could easily have been made, subject, of course, to acceptance thereof by the Federal Government. In the absence of such a reservation, and in the presence of others, it would appear that the familiar doctrine of construction, *"expressio unius est exclusio alterius"* would apply and that as certain reservations were made, it would exclude the presence of any others.

Furthermore, even had an express reservation of jurisdiction been made, the state could only reserve such jurisdiction as would not interfere with the uses to be put to the ceded area by the Federal Government.

United States v. Unzeuta, 281 U. S. 138, 142, 143, 144 (1929);

Fort Leavenworth Railroad Company v. Lowe, 114 U. S. 525, 539, 541;

Chicago Rock Island & Pacific Railway Co. v. McGlinn, 114 U. S. 542;

Arlington Hotel Company v. Fant, 278 U. S. 439, 451;

Benson v. United States, 146 U. S. 542;

United States v. M. M. Fruitt, No. 15828, U. S. D. C. Western District of Washington (unreported);

Rainier National Park Co. v. Martin, D. C. Wash. 1938, 23 Fed. Supp. 60 (affirmed without opinion in 302 U. S. 661), wherein the Ft. Leavenworth case is cited on this point;

Johnson v. Morrill, 20 Cal. 2d 446 (126 P. 2d 873), at page 456, where the California Supreme Court held to the same effect, citing the above cases.

It would seem, then, that the state could not have expressly or impliedly reserved powers to itself which would conflict with the proper administration of the national park. A reservation of jurisdiction over privately owned land within Kings Canyon National Park would have created such a conflict. It would have deprived the National Park Service of the right to maintain law and order, to regulate sanitation, pollution of park waters, contamination of watersheds, kindling of fires near roots of trees, dead wood, mold, etc., discard of lighted cigarettes or other burning materials, firearms, explosives, traps, and seines, and deprive them of the right to control liquor sales, on private property within the park. Admittedly, liquor sales won't create the present and imminent danger to the park found in the other illustrations, but the real problem here is the question of jurisdiction, not whether Petersen and company should sell liquor. Nevertheless, the courts have specifically held

state liquor license laws inapplicable to areas over which exclusive jurisdiction has been ceded. (*Collins v. Yosemite Park Co.,* 304 U. S. 518; *In re Ladd,* 74 Fed. 31.)

It is the position of the United States, therefore, that the State of California intended to cede, and did cede, exclusive jurisdiction over all the lands, public and private, within the exterior boundaries of Kings Canyon National Park, subject to the express reservations in the ceding statute.

II.

If so, What Is the Constitutional Authority for Such Cession?

The California Constitution neither authorizes nor prohibits cessions of jurisdiction for *any* purpose. It only forbids granting away the power of taxation.

Article I, Section 8, Clause 17, of the United States Constitution clearly indicates that a state will cede jurisdiction by its consent. While that Article deals with one type of land and jurisdiction acquisition, we know that the United States may acquire title and jurisdiction outside that Article and that a state may lawfully cede jurisdiction over lands so acquired.

Standard Oil Co. v. Johnson, 10 Cal. 2d 758, 76 P. 2d 1184, 1188;

Collins v. Yosemite Park Co., 304 U. S. 518, 528;

Fort Leavenworth R. R. Co. v. Lowe, 114 U. S. 525, 527, 531, 540, 541;

Yellowstone Park Co. v. Gallatin Co., 31 F. 2d 644, 645;

Chicago, Rock Island & Pac. R. R. v. McGlinn, 114 U. S. 542, 546;

Johnson v. Morrill, 20 Cal. 2d 446, 456.

No specific constitutional authority to cede jurisdiction existed in the cases just cited. In the *Yellowstone* case, no taxing power was reserved and it was contended that the state constitutional prohibition against ceding the taxing power was violated. (The constitutional provision was similar to that of California.) The Court held that there was no violation, and in answer to the charge that a state could cede jurisdiction over all of its territory, the Ninth Circuit held, at page 645:

> "Such a contingency is possible, but improbable, and the situation must be met when it arises."

The *Yosemite* case, *supra,* recognizes the unlimited power of the state to contract away jurisdiction at page 528 in saying:

> "The states of the Union and the National Government may make mutually satisfactory arrangements as to jurisdiction of territory within their borders and thus in a most effective way, cooperatively adjust problems flowing from our dual system of government."

In *Johnson v. Morrill* (California Supreme Court), *supra,* see page 456, where the court, after speaking of the power of the state to reserve certain powers when making a cession of jurisdiction, said: "Further or exclusive authority may be ceded by the state on any terms acceptable to the United States."

Whether a state has yielded jurisdiction to the United States is necessarily a federal question.

Mason Co. v. Tax Commission, 302 U. S. 186, 197.

Therefore, it appears that in California there is no constitutional prohibition against ceding jurisdiction. The matter is left to legislative discretion. In *Government Code, Section 116,* the legislature made title a condition of jurisdiction (military reservation purchases). In *Section 119* (Kings Canyon National Park cession) it did not. This is a clear exercise of the power of contract as set forth in the above quotation from the *Yosemite* case. The reason for the two types of cession *(Sections 119 and 116)* is clear. *Section 116* anticipates a military use that may be temporary. An accompanying section provides for recession of jurisdiction when the military use ceases. *Section 119* cedes jurisdiction over a park area where a permanent use may be presumed.

The Court's attention is directed to a lengthy discussion of a state's power to cede jurisdiction found in *Fort Leavenworth R. R. Co. v. Lowe,* 114 U. S. 525, 527, 531, 540, 541. At page 527, the court said that where land wasn't being used for military purposes, the United States was no different from a private landowner *but* the court later concluded that although the state could exercise authority over such land, the state could also cede that power to the United States. At pages 540 and 541, the court points out the peculiar relationship between these sovereigns permitting a ceding of authority. The language of this case goes farther toward stressing a similarity to private ownership than any other cases discovered and it is believed to be quite provocative of thought on this problem.

We therefore conclude that the state has the *power* to cede jurisdiction over private lands in a case such as this.

III.

Does the United States Purport to Accept Exclusive Jurisdiction Over Such Property?

Cession of jurisdiction to the United States was accepted twice, once by an Act of Congress accepting jurisdiction over General Grant National Park, 16 U. S. C. A. 57 [Tr. pp. 29-30], and the second time by a letter dated April 21, 1945 [Tr. pp. 32-33]. Both used essentially the same language.

In 16 U. S. C. A. 57 [Tr. pp. 29-30] Congress accepted jurisdiction "over the territory embraced *and included within* the Yosemite National Park, Sequoia National Park, and General Grant National Park . . ." (Emphasis added.)

The letter of April 21, 1945 [Tr. pp. 32-33] accepted jurisdiction *"over all lands now included in Kings Canyon National Park."* (Emphasis added.)

By 54 Stat. 41, Section 2, 16 U. S. C. A. 80a [Tr. pp. 30-31], all of Section 5, Township 14 south had been made a part of Kings Canyon National Park. Wilsonia lies in Section 5.

The creating statutes for both General Grant and Kings Canyon National Parks had reserved "validly existing rights." This indicated that private *property rights* were considered and respected. However, political rights, other than those of franchise, were clearly transferred by the ceding and accepting statute.

The acceptance of exclusive jurisdiction was in accord with the long established opinions expressed by the Solicitor of the Department of the Interior to the effect, that, the Federal Government had jurisdiction over private lands within the parks. The Solicitor interpreted the

ceding and accepting statutes in so holding in 54 I. D. 122 and 483 and in unreported opinions February 15, 1936 (M. 28150), July 22, 1938 (M. 28689) and June 29, 1944 (M. 33679).

Lastly, 41 Stat. 731, Section 3, 16 U. S. C. A. Section 80e, in including Kings Canyon National Park within the Southern Judicial District of California, embraced all the territory "within" the park. Section 77, dealing with Sequoia National Park reads "within the boundaries . . . of said . . . Park."

The accepting statute of 1920 and the letter of 1945 were unequivocal. They indicated a clear intent to accept all of the jurisdiction offered by the state.

IV.

If so, What Is the Constitutional Authority for Such Acceptance of Jurisdiction?

The United States Constitution, by Article I, Section 8, Clause 17, *expressly* provides for the acquisition of jurisdiction in only a limited class of cases. (See discussion under "Evolution of the Problem," *ante.*) It does not forbid acquiring jurisdiction in other ways.

The Supreme Court has repeatedly held that this constitutional provision is not the sole authority for the acquisition of jurisdiction and that jurisdiction may be acquired otherwise under the inherent powers of sovereignty. Furthermore, when so acquired, jurisdiction is a matter of contract between the state and Federal Governments.

Standard Oil Co. v. Johnson, 10 Cal. 2d 758, 76 P. 2d 1184, 1188;

Collins v. Yosemite Park Co. (especially pages 528, 529);

Fort Leavenworth R. R. Co. v. Lowe;
U. S. v. Unzeuta;
Yellowstone Park Co. v. Gallatin Co.;
Chicago, Rock Is. & Pac. R. R. v. McGlinn;
Johnson v. Morrill.

(All cited *supra.*)

Further, whereas the only express constitutional authority required "purchase" of the land in order to acquire jurisdiction, the Supreme Court in the above cases held that where land and jurisdiction were acquired under inherent powers of sovereignty, purchase was not necessary, and jurisdiction over land acquired by prior ownership, gift, or condemnation was legal.

We believe that with this much latitude under the powers of sovereignty, the courts could have gone one step further and said, had the Wilsonia question been presented, that jurisdiction could pass over lands adjacent to, or encompassed by, lands acquired by the United States. That is the case here—lands encompassed by federal lands and jurisdiction over the whole essential to a federal function, the administration of a national park.

As stated earlier, the *Yosemite Park* case clearly indicates a constitutional power of contract between state and Federal governments. It seems to hold that the Federal Government may then contract to accept jurisdiction in aid of any governmental purpose.

C. REPLY TO THE ARGUMENTS OF APPELLANTS.

I.

Reply to Appellants' Argument "A."

The appellants argue that the tract of land comprising Wilsonia Village was not "Dedicated and Set Apart" for park purposes.

By 54 Stat. 41, 16 U. S. C. A. 80a [Tr. pp. 30-31], the United States dedicated and set apart for park purposes certain tracts of land. The land described in Section 2 of that Act by section, township and range, included the whole of the tract in which Wilsonia is located.

While it is true that Congress cannot divest private land owners of their property rights nor deprive them of the use and benefit of the same without just compensation, Congress can include private lands, subject to valid existing rights, in an area described and set apart as a national park and make them subject to a cession of jurisdiction by the state.

District Judge Wm. C. Mathes, the Court below, expressed this view as follows [Tr. pp. 49-50]:

> "Admittedly the lands owned by defendants and individual intervenors are not 'set aside and dedicated for park purposes' [see 54 Stat. 41, 43, (1940), 16 U. S. C. §§ 80, 80a]; but it is equally beyond question that 'Wilsonia Village' is, in the language of the California Legislature, 'included in those several tracts of land in the State of California set aside and dedicated for park purposes by the United States as 'Kings Canyon National Park.'"

Therefore, while there was not, in a technical sense, a dedication of the property for park purposes, there was a delineation of the property in clear terms. This delineation was made prior to the statute of cession. The California Legislature, in no uncertain terms, adopted this description of the property with full knowledge that its terms included all property within the described area and must therefore include the small spots of private property.

Section 80a of Title 16, U. S. C. A., sheds some light on the question of dedication of private property. That section reserves, withdraws from settlement, and dedicates and sets apart certain lands as a public park to be known as Kings Canyon National Park. Yet, it provides that it shall not be construed to affect or abridge any right acquired by a citizen of the United States. Query: Does this not imply that some private property may be dedicated for political purposes, but, that proprietary rights will be reserved? The provision as to previously existing rights does not prevent the reservation or dedication of the area described, but merely acknowledges private interests therein.

For an interesting discussion of the effect of change of jurisdiction on private property rights, see *Chicago, Rock Island & Pac. R. R. Co. v. McGlinn,* 114 U. S. 542 at page 546. (In that case a leasehold was the property right affected.)

The appellants in this Wilsonia case urge that a cession of jurisdiction over private property is actually a taking of property without due process of law. Why is this different from ceding jurisdiction over a leasehold as in the *McGlinn, Leavenworth,* and *Unzeuta* cases *(supra),* or different from the situations existing in many national parks where private owners have millions of dollars

worth of private property located on government land subject to exclusive federal jurisdiction? The Yosemite Park and Curry Co. alone has several million dollars worth of property so situated in Yosemite National Park.

Cession of jurisdiction does not alter, or interfere with, private rights. It is only a change of sovereigns with the Federal Government acquiring the same rights to license, zone, regulate and police that the state had, and no more. Actually, the private lands in the park are similar to lands within a zoning, irrigation, school or fire district within a state. The powers of sovereignty granted such a district do not infringe on private property rights any more or any less when the Federal Government takes jurisdiction.

Federal jurisdiction does not deny the right to operate a lawful business. The state could deny a liquor license as could the National Park Service. The same rights of appeal exist in either case. Federal regulations do not forbid liquor in national parks. In fact, permits are granted on private lands at certain locations in Yosemite.

The appellee does not believe that this objection of the appellants is material to the real issues. Instead, it appears to be purely a technicality involving an immaterial and collateral point.

Under Argument "A," the appellants raise two entirely different points which we will discuss in greater detail under Argument "C." These are, beginning on page 18 of Appellants' Opening Brief, the question of the limitations, if any, of 54 Stat. 1083, 40 U. S. C. A. 255, and the point, raised on page 19, that a state cannot cede jurisdiction of private lands within its borders. Because these two points are completely unrelated to Argument "A," discussion of them will be confined to the reply to Argument "C" which follows.

II.

Reply to Appellants' Argument "B."

The appellants contend that the United States Courts do not have jurisdiction of offenses unless committed within or on "Lands Reserved or Acquired for the Use of the United States."

This objection is irrelevant on its face as the instant proceeding is a civil, and not a criminal, action, and whether a state has yielded jurisdiction to the United States is necessarily a federal question. (*Mason v. Commissioner, supra.*) This Court is not called upon to determine the applicability of a criminal statute. The State of California has ceded its jurisdiction over the property in question so far as both civil and criminal matters are concerned. Jurisdiction having passed to the United States, it is up to Congress to confer that jurisdiction upon the Courts as it sees fit. Even if we should assume that Section 7 of Title 18, U. S. C. A., does not confer criminal jurisdiction to the Courts over private property within national parks, it would not mean that the state had any jurisdiction, since such jurisdiction has already been ceded to the United States. It would only mean that a hiatus might exist until cured by Congress.

It is not conceded, however, that Section 7 denies criminal jurisdiction in a case involving lands such as Wilsonia. It will be noted that subsection 3 of Section 7 reads in part:

> "3. Any lands *reserved or acquired* for the use of the United States, *and under the exclusive* or concurrent *jurisdiction thereof* . . ." (Emphasis added.)

Congress *reserved* and withdrew from settlement certain forest lands, including all of Section 5, in 1890, by 26 Stats., Chapter 1263, Section 3, p. 650 [Tr. p. 71]. Provision was made that the reservation was subject to valid prior existing rights. We therefore have a reservation, even though qualified as to valid prior existing rights, and a cession of exclusive jurisdiction by the state. This should meet the requirements of Section 7.

Further, and more important, Title 18 of the United States Code is not the exclusive authority for criminal jurisdiction. Many crimes are defined, and penalties established, under other titles of the code. While the new Title 18, U. S. C., repealed a number of existing criminal laws, it did not repeal any of the other criminal statutes which concern us here. It should also be noted that the definition of "Maritime and Territorial Jurisdiction" is limited by its terms to "as used in this title."

The Court is urged to read *41 Stat. 731, Chapter 218,* in its entirety, and particularly Section 3 thereof, which reads as follows:

> "SEC. 3. That said Sequoia National Park and General Grant National Park shall constitute part of the United States judicial district for the southern district of California, and the district court of the United States in and for said southern district shall have jurisdiction of *all offenses committed within the boundaries* of said Sequoia National Park and General Grant National Park." (Emphasis added.)

This language seems very clear that criminal jurisdiction was conferred on the District Court to hear and determine criminal matters arising *anywhere within the boundaries* of the park. While this statute refers to General Grant National Park, it should be noted that the

creation of Kings Canyon National Park was largely a change of name and that the ceding statute of Kings Canyon National Park was in identical terms to those used for General Grant National Park.

More recently, 16 U. S. C. A. 80e gave jurisdiction to a United States Commissioner over certain offenses "within" Kings Canyon National Park. This was repealed by 28 U. S. C. A. 631 (60 Stat. 119, Ch. 202), to the extent that it made the commissioner for Sequoia National Park also the commissioner for Kings Canyon National Park.

Section 2 of 60 Stat. 119, Chapter 202, reads in part:

> "The commissioner shall have jurisdiction to issue process in the name of the United States for the arrest of any person charged with a violation of any of the rules and regulations made by the Secretary of the Interior in pursuance of law for the government and protection of the park, or with the commission within the park of a petty offense against the law, and to try the person so charged, who, if found guilty, shall be subject to the punishment prescribed by section 3 of the Act of August 25, 1916 (39 Stat. 535; 16 U. S. C., sec. 3) as amended."

Furthermore, *16 U. S. C. A. 77,* which defines the jurisdiction of the courts and commissioner in regard to Sequoia National Park, is Section 3 of 41 Stat. 731, Chapter 218, cited above. The result is that the District Court has jurisdiction of all offenses committed *within the boundaries* of Kings Canyon National Park.

The cases cited by the appellants on this proposition are not at all in point. Each is distinguishable on its facts and will be so distinguished, at this point, in appellee's brief on a case by case basis.

First, the case of *Pothier v. Rodman,* U. S. Marshal (App. Op. Br. p. 21). In this case there had been an express cession of jurisdiction to the United States to take place upon the fulfillment of certain conditions. The state authorized Pierce County to condemn certain lands and donate them to the United States and said that the state consented to the cession of jurisdiction over the lands "so conveyed" and provided that upon the completion of the conveyance, a sufficient description by metes and bounds and an accurate plat or map should be filed. Pothier committed a murder, on the land in question, *before* the deeds were executed and before the maps and plats were filed. The court held that jurisdiction did not take effect until the conditions of the cession were carried out, to-wit, execution of a deed and the filing of maps and plats. This was not an Article I, Section 8, Clause 17, case because there was no "purchase" (see earlier discussion on the Evolution of the Problem) and therefore an express cession was necessary. Failure to meet the conditions of the cession caused jurisdiction to fail. That is totally unlike the present case where there is no question about failing to comply with conditions of cession. The *Pothier* case does not, therefore, offer any authority to the effect that title is necessary in all cases in order for there to be jurisdiction. The government merely had not performed its contractual obligations before the crime was committed.

In *Valley County v. Thomas* (App. Op. Br. p. 23) there was no automatic cession of jurisdiction because although there was a "purchase," the land was not acquired for any of the purposes enumerated in Article I, Section 8, Clause 17, of the Constitution. As a result, the case fell within those classes of cases where express cession of jurisdiction is necessary. The state had a

general ceding statute, but, like the statute in the *Pothier* case, there was a requirement of a filing of a plat or map. The court held that the filing of the plat or map was a condition precedent to the passage of jurisdiction and that, therefore, jurisdiction did not lie in the United States where the condition had not been fulfilled. In fact, the Court, at page 360 (97 P. 2d), held that the filing of the plat or map was in effect a giving of notice to the world that jurisdiction was being accepted by the United States.

In *Adams v. United States* (App. Op. Br. p. 23) jurisdiction failed because the United States, through the proper officer, had not given notice of acceptance of jurisdiction. Title to the land was not an issue, and was not discussed. There is no analogy whatever with the present case, as it has been stipulated that jurisdiction was accepted by the United States over the General Grant Grove Section of Kings Canyon National Park in each instance of cession.

In *United States v. Tully* (App. Op. Br. p. 25) the Constitution of Montana granted jurisdiction to the United States over certain military reservations which had been created before Montana became a state. However, the crime was committed on lands used by the reservation but never made a part thereof, and therefore jurisdiction did not attach to those lands.

The case of *People v. Bondman* (App. Op. Br. p. 25) is another case where jurisdiction was attempted to be claimed automatically under Article I, Section 8, Clause 17, of the Constitution, but, as there was no purchase, that jurisdiction fell.

In *United States v. Tierney* (App. Op. Br. p. 26) again there was no express cession of jurisdiction, and,

as the land was rented and not "purchased," no jurisdiction could be spelled out of Article I, Section 8, Clause 17, of the Constitution.

It will be seen, therefore, that all of the cases cited by the appellants in this portion of their brief are completely inapplicable for the reason that in each case there is a specific reason why jurisdiction failed. None of these reasons was based on failure to own the land, except to the extent that in the particular types of cession involved, there was an *express* requirement of passage of complete and formal title. There are no such conditions precedent in the present case.

III.

Reply to Appellants' Argument "C."

It is believed that this point has been fairly well developed earlier in this brief under the section entitled "Evolution of the Problem." Because of the serious nature of the argument, however, specific rebuttal to the arguments of appellants will be made here.

The appellants contend that there is a "legal philosophy" of the relationship between the state and the National Government which requires title as a prerequisite of jurisdiction. Some of the earlier cases might have given that impression because, as pointed out earlier, it was first thought that the only means of acquiring jurisdiction was through Article I, Section 8, Clause 17, of the Constitution which required "purchase" for certain specific purposes. However, as we have shown, the law of cession of jurisdiction has gone through a process of

evolution whereby other means of acquiring jurisdiction have arisen:

See:

Ft. Leavenworth R. R. Co. v. Lowe, supra;
Collins v. Yosemite Park Co., supra;
Standard Oil Co. v. United States, supra.

A "purchase" is no longer necessary, and it is also no longer necessary that the land in question be used for any specific purposes as long as there is some beneficial use to the government.

Discussion of Cases Cited.

The cases of *Rodman v. Pothier, Adams v. United States,* and *People v. Bondman* (App. Op. Br. p. 30) have been discussed and distinguished under the last previous topic.

In *James v. Dravo Contracting Co.* (App. Op. Br. p. 30) appellant makes much of the fact that the United States did not have title to the beds of the rivers upon which the dams were built. This was very true. However, it was also true that the state did not, at any time, attempt to cede jurisdiction over those dams. The statute "consented" to purchase, lease, condemnation, etc., but in ceding jurisdiction there was the express restriction that jurisdiction would lie only so long as "the United States shall be the owner." (See West Virginia statute set forth in the footnotes on pages 143 and 144 of 302 U. S.) So, again, jurisdiction did not exist because the conditions of cession were not met. And, again, this case is unlike the present case where there are no conditions precedent to the cession of jurisdiction but merely reservations of power to serve process, to tax,

and to exercise the right of franchise. The appellants are attempting to imply certain conditions precedent that simply did not exist.

Atkinson v. State Tax Commission (App. Op. Br. p. 31) is not in point, as there was no attempt to cede jurisdiction nor any attempt by the United States to assume jurisdiction.

Johnson v. Morrill (App. Op. Br. p. 32) is merely authority for the well established rule that where land is not acquired under the provisions of Article I, Section 8, Clause 17, of the Constitution, jurisdiction is not automatic, and there must be an express cession of jurisdiction.

At page 451, the court said:

> "The parties to the present proceedings are in agreement that exclusive jurisdiction over that land was not acquired by the United States because the land was not 'purchased' as provided by Section 8 of the Constitution."

In that case, the United States did not assume jurisdiction and the California Court said that it felt that the United States did not want jurisdiction and that jurisdiction should not be forced upon it.

In *Palmer v. Barrett* (App. Op. Br. p. 34) the cession of jurisdiction to the United States was expressly conditioned upon continued use of the land for military purposes. When the government leased some of the land for the parking of commercial produce wagons, jurisdiction failed, by failure to comply with the requirements of the conditional cession.

The other cases cited under Appellants' Argument "C" will not be discussed here as appellant does not offer them to support his contention that title is necessary

to jurisdiction. They merely indicate that even where the intended use has ceased, jurisdiction may not revert if the lands are being put to a public use, even though by private enterprise.

Two cases were cited earlier under Argument "B" on this point (App. Op. Br. pp. 18-19). They were *In re Conner,* 37 Wis. 379, 19 Am. Rep. 765, and *United States v. Schwalby,* 29 S. W. 90. These cases are just like the others cited by the appellants in that they are Article I, Section 8, Clause 17, cases and jurisdiction failed because of failure to comply with the express requirements of that section.

Appellant contends (App. Op. Br. p. 36) that jurisdiction reverts either by express condition of the grant by the state or by operation of law. While the former is true (see *California Government Code, Sec. 113, et seq.*), the second is not. Some of the early cases indicated that there would be a recession of jurisdiction when the specific governmental use ceased, but in *Ft. Leavenworth, McGlinn and Arlington Hotel* cases, *supra,* federal jurisdiction was upheld even where the lands were leased, or permanent rights-of-way granted, to private parties, and governmental use of the land ceased.

It should be noted that, in California, *Government Code, Section 113, et seq.,* provide a special clause of recession when property is acquired for military reservations and the military use ceases. However, there is no such provision in the California statutes dealing with national parks.

To show the fallacy of the appellants' theory of recession, let us look at the following problems: (1) If the United States grants title to a tract of park land (to a private individual), does jurisdiction automatically recede to the state? Note that there have been such grants [Tr. p. 27 (56 Stat. 310)]. Even though the land might pass to private ownership, the situation would be similar to that in *United States v. Unzeuta,* 281 U. S. 138 (1929) where the court said, at page 143, that it would be impractical for the state to police it "and the Federal jurisdiction may be considered to be essential to the appropriate enjoyment of the reservation for the purposes to which it was devoted." (2) If the United States leased park lands or otherwise allocated lands to other than park purposes, must a court rule on the issue of jurisdiction in each instance? We believe not. The state and Feneral Government contracted to avoid such a fluctuating jurisdiction situation by providing for a unified policing of the whole area blocked out for the national park. That a patchwork type of jurisdiction was not contemplated by the parties is clear from the language of the statute. The sovereigns wisely included in their jurisdictional contract all of the territory within the boundaries of the respective parks without requiring the Federal Government to secure and hold a proprietary interest or title in every tract of land within said parks. In such matters, courts follow the actions of political departments of the government. (*Benson v. United States,* 146 U. S. 35; *Steele v. Halligan,* 224 Fed. 1011, 1015.)

Arguments as to the National Park Statutes.

These arguments begin on page 36 of the Appellants' Opening Brief and appear to contend that the statutes imply that title is necessary to jurisdiction because of the fact that in most instances they provide that when new lands are added to the parks, they thereafter become subject to all laws and regulations applicable to the park. Such an implication does not, in fact, exist. The language of the statutes is aimed at correcting conditions entirely foreign to the problem involved here.

The appellants make considerable issue of the provisions of 40 U. S. C. A. 255 (App. Op. Br. pp. 18 and 23). That section reads, in part, that the Secretary of a department is permitted to accept exclusive jurisdiction "over lands or interests therein which have been or shall hereafter be acquired by it." It should be noted that the statute refers to *"lands or interests."* (Emphasis added.) If the appellants are correct that *title* is necessary to jurisdiction, what does *"interests"* mean? It quite obviously means some interest in land other than title. Yet nothing short of fee simple title satisfies the appellants herein. "Interests" might be a leasehold, or, as in this case, an interest in the private land insofar as police jurisdiction over the whole park is concerned. The United States as a nation has "interests" abroad but that term has never been construed to be limited to land titles. The interests are frequently political. Here, the interest is in the general welfare of the national park as a whole and as such the interest encompasses private lands within the park that could affect or interfere with

the orderly operation and policing of the park. The distinction of "lands or interests" is believed very significant.

What if appellants are correct in their argument that Section 255 requires title? If that section has the effect of wiping out the 1943 cession, the 1919 cession still remains in effect so far as Wilsonia is concerned, due to the fact that it was a part of lands comprising General Grant Park, and there is no provision for recession of the jurisdiction ceded over that Park in 1919 by *California Statutes 1919, Chapter 51, Section 1* [Tr. pp. 28-29].

Further, however, even if appellants' argument as to Section 255 should be upheld, we believe that the act of the Secretary of Interior in accepting jurisdiction was ratified by 16 U. S. C. A. 80e (60 Stat. 119, Chapter 202), whereby the United States Commissioner was given jurisdiction over certain offenses "within" Kings Canyon National Park.

Section 80e of 16 U. S. C. A., as a code section, was repealed in 1948 and the jurisdictional portion thereof is now covered by *28 U. S. C. A. 631* (60 Stat. 119, Chapter 202) which provides that "The national park commissioner for the Sequoia National Park shall also be the national park commissioner for Kings Canyon National Park." *Section 2 of 60 Stat. 119, Chapter 202,* reads in part:

> "The commissioner shall have jurisdiction to issue process in the name of the United States for the arrest of any person charged with a violation of any of the rules and regulations made by the Sec-

retary of the Interior in pursuance of law for the government and protection of the park, or with the commission within the park of a petty offense against the law, and to try the person so charged, who, if found guilty, shall be subject to the punishment prescribed by section 3 of the Act of August 25, 1916 (39 Stat. 535; 16 U. S. C., sec. 3) as amended."

We should then look to *16 U. S. C. A., Section 77,* which provides:

"Sequoia National Park shall constitute part of the United States judicial district for the southern district of California, and the district court of the United States in and for said southern district shall have jurisdiction of all offenses committed *within the boundaries* of said Sequoia National Park." (Emphasis added.)

Sequoia and General Grant National Parks (predecessor to Kings Canyon National Park), fell under the 1919 Statute of cession [Tr. p. 28] and Kings Canyon jurisdiction was ceded under an identical statute [Tr. p. 31]. Therefore, when Congress grants jurisdiction "within the boundaries" of these parks, it seems clear that they intended exactly what they said, to-wit, everything within the boundaries. This would appear to include private property "within the boundaries."

The appellants cite a number of statutes (App. Op. Br. pp. 36-37), from 16 U. S. C. A. 47e to 16 U. S. C. A. 403h-11, inclusive, for the proposition that the government recognizes the principle that it does not acquire jurisdiction over lands in national parks unless it owns the lands. These statutes dealing with title have no

bearing on jurisdiction in parks where jurisdiction is ceded by the state without an express requirement of title. Since lands are acquired by the United States for many purposes, it is always desirable, and sometimes necessary (when, for example, another government bureau is supplying base lands or timber to effect an exchange) to make it clear in the statutes authorizing the acquisition, that when title to the lands vests in the United States, such lands are to continue under park administration, when such is the case.

Conclusions.

We have traced, at some length, the Evolution of the Problem of Cession of Jurisdiction. The end result is that the Supreme Court of the United States now concludes (*Collins v. Yosemite Park Co., supra*) that jurisdiction is purely a matter of contract between sovereignties to make mutually satisfactory adjustments of jurisdiction within their boundaries. The only question is whether the state intended to cede jurisdiction and whether the United States intended to accept that jurisdiction. That the parties so intended in this case seems clear, from the statutes of cession and the statute and letter of acceptance, especially when considered with the background of the problem in California.

We leave the Court with this thought:—Is the Federal Government to be dependent upon the state in which the park lies to police private holdings within the park? Or, has the Federal Government taken unto itself by cession

sufficient power to provide, without dependence upon the state, for correction of all such abuses as may arise?

The objections of appellants skirt the real question and raise collateral questions which we believe have been answered.

While we believe that a holding of jurisdiction in the United States is justified under the law as cited, it admittedly calls for courageous pioneering with new law extending the previously existing precedents. The Court below, once convinced of the merit of the government's position, did not hesitate to take that step. It is respectfully submitted that that decision should be affirmed.

Respectfully submitted,

ERNEST A. TOLIN,
United States Attorney,

WALTER S. BINNS,
Chief Assistant United States Attorney,

CLYDE C. DOWNING,
Assistant United States Attorney,

MAX F. DEUTZ,
Assistant United States Attorney,

Attorneys for Appellee.